

No. 14,467

IN THE

United States Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

JOHN O. ENGLAND, Trustee in Bankruptcy of the Estate of Bradford Welch, Inc., a Corporation, Bankrupt,

Appellee.

On Appeal from the United States District Court
for the Northern District of California.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

OPINION BELOW.

The District Court did not make findings of fact or render an opinion, it merely entered an order confirming the order of the referee in bankruptcy (R. 31) and that order, dated May 25, 1954, is not reported.

JURISDICTION.

Bradford Welch, Inc., was adjudicated a bankrupt in the United States District Court for the Northern District of California, Southern Division, on July

23, 1951.¹ The Collector of Internal Revenue for the First Collection District of California filed a claim in bankruptcy against Bradford Welch, Inc., for withholding and insurance contributions taxes and interest thereon on April 28, 1952. (R. 27-29.) Later, on August 22, 1952, the Collector of Internal Revenue filed an amended claim for taxes and interest due and owing the United States by Bradford Welch, Inc. (R. 12.) The referee in bankruptcy entered an order on or about October 29, 1953, directing that the claim filed on behalf of the United States for taxes and interest due and owing from the bankrupt in the amount of \$2,192.64 be allowed in its entirety as a priority claim and disallowing any part thereof as a secured claim under Section 67 of the Bankruptcy Act. (R. 4-7.) A petition for review of the referee's order was filed on behalf of the United States by the Collector of Internal Revenue in the United States District Court for the Northern District of California, Southern Division, on December 4, 1953. (R. 3-8.) Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1334. The District Court entered an order confirming the order of the referee in bankruptcy on May 25, 1954. (R. 31.) Within thirty days and on June 24, 1954, notice of appeal was filed. (R. 32.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

¹It is undisputed that Bradford Welch, Inc., was adjudicated a bankrupt on July 23, 1951. However, the only indication in the record that that was the date appears on page 10 where the date July 23, 1951, acts as a dividing line when interest ceased on the taxes due and owing the Government.

QUESTION PRESENTED.

Whether the District Court erred in confirming the order of the referee in bankruptcy disallowing the claim of the Government that it had valid liens for unpaid taxes and interest in the amount of \$945.37 upon the assets of Bradford Welch, Inc., bankrupt, which were entitled to the priority of payment prescribed by Section 67 of the Bankruptcy Act.

STATUTES INVOLVED.

The applicable provisions of the statutes involved are set forth in the Appendix, *infra*.

STATEMENT.

The pertinent facts in this case are as follows:

On July 23, 1951, Bradford Welch, Inc., was adjudicated a bankrupt by the District Court, and John O. England was appointed trustee in bankruptcy of the estate of Bradford Welch, Inc. (R. 4-5, 10.) On April 28, 1952, the Collector of Internal Revenue for the First Collection District of California filed a claim with the trustee in bankruptcy for withholding and insurance contributions taxes and interest thereon due and owing the United States by the bankrupt. (R. 27-29.) Later, on August 22, 1952, the Collector filed a "First Amended Claim of United States for Taxes" with the trustee in bankruptcy claiming that there was \$2,192.64 in taxes and interest due and owing the

United States by the bankrupt. The Collector claimed that \$945.37 of that amount was secured by liens on the assets of Bradford Welch, Inc., which arose under the provisions of Sections 3670 and 3671 of the Internal Revenue Code of 1939 before it was adjudicated a bankrupt. (R. 4-9.)

The trustee in bankruptcy filed objections to the claim of the United States. On October 22, 1952, a hearing was held before a referee in bankruptcy on the amended claim of the United States and the objections raised thereto by the trustee in bankruptcy. (R. 13.) Counsel for the trustee in bankruptcy said that one of the objections raised to the amended proof of the Government's claim was that it did not appear from it when "the lien was either assessed, reported, or effected." (R. 14.) Following a discussion between counsel and the referee in bankruptcy as to the quantum of proof necessary for the Government to establish that it had a lien upon the assets of the bankrupt, counsel for the Government asked permission to be allowed to introduce in evidence "Certificates of Assessments and Payments" (Treasury Form 899) to show the dates the assessment lists were received by the Collector, and the dates on which notice and demand were duly made upon Bradford Welch, Inc. After counsel for the trustee in bankruptcy said that "I won't object to the introduction of such evidence," the Certificates of Assessments and Payments were admitted in evidence. (R. 16, 27-29; Ex. 1.) Counsel for the Government volunteered that

insofar as he knew no notice of lien had been filed with the office of the County Recorder. (R. 16-17.)

It was stipulated between counsel that the only property in the estate of the bankrupt was personal property. (R. 17.)

On October 29, 1953, the referee in bankruptcy entered an order directing that the claim of the United States be allowed in its entirety as a priority claim and disallowing any part thereof as a secured claim. The referee in bankruptcy found that "the United States never has filed any notice of the aforesaid claimed statutory lien as provided in Section 3672 of the Internal Revenue Code." The referee also found that the trustee in bankruptcy was "vested with all the rights, remedies, and powers of a creditor then holding a lien on the assets of the bankrupt," and that "at no time did the United States have any lien whatsoever upon the assets of the bankrupt, or on any part thereof, as against the other creditors of the bankrupt, including the State of California and the City and County of San Mateo." (R. 4-7.)

On May 25, 1954, the District Court entered an order affirming the order of the referee in bankruptcy granting the amended tax claim of the United States in its entirety as a priority claim and disallowing any part thereof as a secured claim. (R. 31.)

STATEMENT OF POINTS TO BE URGED.

1. The Government introduced proof sufficient to establish that it had valid liens for unpaid taxes and interest in the amount of \$945.37 which arose upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt.

2. The federal liens for the unpaid taxes and interest are valid and though subordinate to items which come under subsections (1) and (2) of Section 64 a, are entitled to the priority of payment as prescribed by Section 67 of the Bankruptcy Act.

SUMMARY OF ARGUMENT.

The District Court erred in confirming the order of the referee in bankruptcy disallowing the claim of the Government that it had valid liens for unpaid taxes and interest in the amount of \$945.37 upon the assets of Bradford Welch, Inc., bankrupt, which were entitled to the priority of payment prescribed by Section 67 of the Bankruptcy Act. The Government introduced evidence sufficient to prove that it held liens for unpaid taxes upon the assets of Bradford Welch, Inc., which arose before it was adjudicated a bankrupt and those liens were valid as against the trustee in bankruptcy.

Sections 3670 and 3671 of the Internal Revenue Code of 1939 provide that a lien for unpaid taxes arises upon all the property belonging to the delinquent taxpayer after demand and at the time the

assessment list is received by the Collector. Such liens are general and perfected liens. The certificates of assessments and payments introduced into evidence by the Government showed that liens for unpaid taxes and interest in the amount of \$945.37 arose upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt. While the certificates may not have been the best evidence, they were admitted with the express approval of counsel for the trustee in bankruptcy for that very purpose and therefore must be considered.

The liens were valid against the trustee in bankruptcy entitling them to the priority of payment prescribed by Section 67 of the Bankruptcy Act. The fact they were unrecorded and the Government did not have possession of any of the assets of the bankrupt, which consisted entirely of personal property, merely served to postpone them in the order of payment to the debts specified in clauses (1) and (2) of Section 64 a of the Bankruptcy Act. It did not serve to render them invalid as against the trustee in bankruptcy. It is well settled that unrecorded tax liens are valid against all persons except those classes of persons specifically enumerated in Section 3672 of the Internal Revenue Code of 1939, that is, "any mortgagee, pledgee, purchaser, or judgment creditor." In *United States v. Gilbert Associates*, 345 U.S. 361, 364, the Supreme Court said that "Congress used the words 'judgment creditor' in §3672 in the usual, conventional sense of a judgment of a court of record, since all states have such courts." While Section 70 c of the

Bankruptcy Act provides that as to all property in the possession of the bankrupt the trustee in bankruptcy shall be considered a lien creditor and as to all other property a judgment creditor, it does not serve to make him a judgment creditor in the ordinary, usual or conventional sense as required under Section 3672 of the Code. Accordingly, unrecorded liens for taxes are valid as against the trustee in bankruptcy and entitled to the priority of payment prescribed by Section 67 of the Bankruptcy Act.

ARGUMENT.

THE GOVERNMENT HAD LIENS FOR UNPAID TAXES AND INTEREST IN THE AMOUNT OF \$945.37 UPON THE ASSETS OF BRADFORD WELCH, INC., BANKRUPT, WHICH WERE ENTITLED TO THE PRIORITY OF PAYMENT PRESCRIBED BY SECTION 67 OF THE BANKRUPTCY ACT.

The referee in bankruptcy entered an order directing that the claim of the United States for taxes and interest thereon in the amount of \$2,192.64 be allowed in its entirety as a priority claim and disallowing any part thereof as a secured claim. The District Court, without making findings of fact or rendering an opinion, entered an order confirming the order of the referee in bankruptcy. For the reasons hereinafter stated, we submit that the order of the District Court confirming the order of the referee in bankruptcy should be reversed to the extent that it disallowed the claim of the Government that it had valid liens for unpaid taxes and interest in the amount of \$945.37 upon the assets of Bradford Welch, Inc., bankrupt,

which were entitled to the priority of payment prescribed by Section 67 c of the Bankruptcy Act. (Appendix, *infra*.)

In the absence of findings of fact or an opinion by the District Court we are forced to resort to an examination of the order of the referee in bankruptcy to determine the basis for the holding that the Government did not have a secured claim for taxes under Section 67 of the Bankruptcy Act. As we interpret the order of the referee in bankruptcy, it is impossible to determine the exact theory upon which he decided that the Government did not have such a claim. We submit that it is subject of two possible interpretations: (1) that the Government failed to introduce sufficient proof to establish that liens for unpaid taxes arose under Sections 3670 and 3671 of the Internal Revenue Code of 1939 (Appendix, *infra*) upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt, or (2) that the unrecorded tax liens of the Government were invalid because under Section 70 c of the Bankruptcy Act (Appendix, *infra*), the trustee stands as a judgment creditor. We respectfully submit that the Government introduced sufficient evidence to prove that it held liens for unpaid taxes in the amount of \$945.37 which arose upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt and that those liens were valid as against the other creditors of the bankrupt.

- A. The Government introduced evidence sufficient to prove that it had valid liens for unpaid taxes in the amount of \$945.37 which arose upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt.**

Section 3670 of the Code provides that if any person refused to pay any tax after demand the same "shall be a lien in favor of the United States upon all property and rights in property, whether real or personal, belonging to such person." Under Section 3671 of the Code, the lien arises at the time the assessment list is received by the Collector, unless another date is fixed by law, and continues until the liability is satisfied or becomes unenforceable by lapse of time. Such liens are general and perfected liens. *United States v. New Britain*, 347 U.S. 81, 84. When a lien for federal taxes arises the Government acquires an interest in the property which in effect then has two owners. See *United States v. City of Greenville*, 118 F. 2d 963 (C.A. 4th).

In the instant case, the Collector filed a "First Amended Claim of United States for Taxes" claiming, among other things, that the Government had liens for taxes on the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt. (R. 9.) The trustee in bankruptcy filed objections to this claim and a hearing was held thereon before a referee in bankruptcy. (R. 13-14.) Counsel for the trustee made the statement (R. 14) that "it does not appear from the amended proof when the lien was either assessed, reported, or effected." A discussion ensued between counsel and the trustee in bankruptcy as to the quantum of proof that is necessary for the Govern-

ment to establish that it has a lien upon the assets of the bankrupt. (R. 15-16.) Afterwards, counsel for the Government said that in view of the objections that had been made he would like to offer in evidence the "Certificates of Assessments and Payments" to show the actual dates the assessments were made and received by the Collector. (R. 16.) Counsel for the trustee replied saying "I won't object to the introduction of such evidence." (R. 16.) Counsel for the Government then said (R. 16):

On behalf of the Collector, then, your Honor, I should like to introduce in evidence the Certificate of Assessments and Payments which cover the taxes in the proof of claim under the heading, "Taxes secured by statutory lien under Sec. 3670-3672 Internal Revenue Code." These certificates show the dates the assessments were made, the date the assessments were received and notice and demand was made upon the taxpayer with respect to those respective taxes.

Three certificates of assessments and payments were admitted in evidence. (R. 16, 27-29; Ex. 1.) Counsel for the Government volunteered that insofar as he knew no notice of lien had been filed with the office of the County Recorder. (R. 16-17.)

The certificates of assessments and payments show that liens for taxes in the amount of \$945.37 arose upon the assets of Bradford Welch, Inc., before it was adjudicated a bankrupt. That was the avowed purpose for which they were introduced in evidence. We submit that they constituted sufficient evidence to estab-

lish that the Government had such liens. See *United States v. Ettelson*, 159 F. 2d 193, 195 (C.A. 7th), and the cases cited therein. While the certificates may not have been the best evidence, they were admitted with the express approval of counsel for the trustee in bankruptcy, rather than over his objection, and therefore must be considered for what they show.

B. The liens were valid and entitled to the priority of payment prescribed by Section 67 of the Bankruptcy Act.

Section 64 of the Bankruptcy Act (Appendix, *infra*) sets forth the order in which unsecured debts are to be paid. Insofar as unsecured claims for taxes of the United States or any state or subdivision thereof, they are subordinated to the payment of administration and small wage claims and given what is commonly referred to as a fourth class priority. Section 64 of the Bankruptcy Act has no application to claims for federal or other taxes which are secured by liens. Section 67 of the Bankruptcy Act deals expressly with liens. Subsection a of Section 67 deals with void liens and subsection b deals with valid liens including "statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State." With regard to valid liens, subsection b provides that these may be valid against the trustee even though arising and perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy. Subsection c of Section 67 provides that statutory liens, including liens for taxes or debts owing to the United States or to any

state or any subdivision thereof, on personal property not accompanied by possession of such property shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of Section 64, which are small wage claims and certain administration expenses.

This Court had occasion recently to consider the effect that subsection c of Section 67 has upon subsection b of Section 67 in *California State Dept. of Employ. v. United States*, 210 F. 2d 242. In that case the Court said that Section 67 c does not affect or impair the priorities of liens recognized by Section 67 b and that Section 67 c "deals only with the relationship of the lienholder without possession to *unsecured* creditors having priorities under §64, sub. a." The Court concluded (p. 244):

Thus we see that statutory liens unaccompanied by possession of the personal property to which they attach are postponed in payment only to the two claims specifically mentioned, viz. wages and expenses of administration.

Counsel stipulated that there was only personal property in the estate of Bradford Welch, Inc., bankrupt. (R. 17.) In the absence of possession by the Government of any of the bankrupt's property, we concede that under Section 67 c of the Bankruptcy Act the liens of the Government for unpaid taxes are required to be postponed in order of payment to the debts specified in clauses (1) and (2) of Section 64 a. We contend, however, that the liens in question were secured claims under Section 67 b and entitled to

priority of payment over the unsecured claims for taxes of the State of California or any subdivision thereof.

Unquestionably liens for taxes created under Sections 3670 and 3671 of the Internal Revenue Code of 1939 are applicable in bankruptcy. Indeed, this Court recognized that fact in *California State Dept. of Employ. v. United States*, *supra*, and *United States v. Heffron*, 158 F. 2d 657. See also *Goggin v. California Labor Div.*, 336 U.S. 118, 126. In the *California State Dept. of Employ.* case the Court said (p. 243):

Section 67, sub. b of the Bankruptcy Act expressly provides that liens for taxes owed to the United States or any state are valid against the trustee. 11 U.S.C.A. §107, sub b. Section 67, sub. b places federal and state liens in the same category. The rank and position of such liens is determined by applicable lien law.

As we previously indicated, it is possible that the referee in bankruptcy's disallowance of the claim of the Government that it held liens for unpaid taxes and interest in the amount of \$945.37 upon the assets of Bradford Welch, Inc., bankrupt, which were entitled to the priority of payment prescribed by Section 67 b and c of the Bankruptcy Act was premised upon an erroneous interpretation of Section 3672 of the Internal Revenue Code of 1939. (Appendix, *infra*.) Section 3672 provides that tax liens "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been

filed by the collector.” It is plain that a trustee in bankruptcy does not come within any of the classes of persons enumerated in Section 3672.

Liens created under Sections 3670 and 3671 of the Code are, we repeat, general and perfect liens. If unrecorded they are valid against all persons with the exception of those classes of persons specifically enumerated by Section 3672 of the Code, that is, mortgagees, pledgees, purchasers, and judgment creditors. See *United States v. New Britain*, *supra*; *United States v. Gilbert Associates*, 345 U.S. 361; *United States v. Security Tr. & Sav. Bk.*, 340 U.S. 47.

The Supreme Court had cause to consider the meaning of the words “judgment creditor” as used in Section 3672 in *United States v. Gilbert Associates*, *supra*. That case involved the question of whether the Town of Walpole, New Hampshire, or the Federal Government had prior right to a fund in the hands of a state court receiver of the bankrupt corporation. The New Hampshire Supreme Court had held that tax assessments were in the “nature of a judgment” under the law of New Hampshire and that after the Town had made an assessment for taxes it was a judgment creditor within the meaning of Section 3672. Reversing the New Hampshire Supreme Court, the Supreme Court of the United States said (p. 364) that “Congress used the word ‘judgment creditor’ in §3672 in the usual, conventional sense of a judgment of a court of record, since all states have such courts.” See also Justice Jackson’s concurring opinion in *United States v. Security Tr. & Sav. Bk.*, *supra*. And,

as the Supreme Court just recently said in *United States v. New Britain*, *supra* (p. 88):

There is nothing in the language of §3672 to show that Congress intended antecedent federal tax liens to rank behind any but the specific categories of interests set out therein, and the legislative history lends support to this impression.

Traditionally, a judgment is a determination or adjudication made by a Court. (3 Blackstone Commentaries 365.) Under that definition, a judgment creditor is one in whose favor an obligation or debt is created by a decision or verdict of a Court.

Section 70 c of the Bankruptcy Act provides that a trustee in bankruptcy shall be a lien creditor as to all property in his possession and as to all other property a judgment creditor.² Neither serves to make him a judgment creditor within the ordinary, usual or conventional sense. It necessarily follows, therefore, that under the rationale of the Supreme Court's decisions in *United States v. Gilbert Associates*, *supra*, and *United States v. Security Tr. & Sav. Bk.*, *supra*, a trustee in bankruptcy is not a judgment creditor nor a mortgagee, pledgee, or purchaser within the meanings of the words as they are used in Code Section 3672.³

²A 1952 amendment of Section 70 c of the Bankruptcy Act (Act of July 7, 1952, c. 579, 66 Stat. 420) provides that as to all property, including both the property in the possession of the bankrupt and that not in his possession, the trustee in bankruptcy shall be considered a lien creditor.

³If the trustee in bankruptcy is to be considered a judgment creditor under Section 70 c of the Bankruptcy Act then he is, as this Court indicated in *Sampsell v. Straub*, 194 F. 2d 228, 231, a "hypothetical" judgment creditor. Most certainly he is not a judgment creditor in the ordinary, usual or conventional sense

The question of whether a trustee in bankruptcy is a judgment creditor within the meaning of Section 3672, insofar as we know, has been considered in only three cases.⁴ See *In re Ann Arbor Brewing Co.*, 110 F. Supp. 111 (E.D. Mich.); *United States v. Sands*, 174 F. 2d 384 (C.A. 2d); *In re Taylorcraft Aviation Corp.*, 168 F. 2d 808 (C.A. 6th). In both the *Ann Arbor Brewing Co.* case and the *Taylorcraft Aviation* case it was held that the trustee in bankruptcy was not a judgment creditor within the meaning of Section 3672. The Second Circuit's statement in the *Sands* case to the contrary is mere dictum. The question in that case was whether the Government's claim for taxes was to be postponed to the claimants in Section 64 a (1) and (2), where no notice of lien had been filed but the Collector had taken possession of the personal property of the bankrupt. In any event, the decision in the *Sands* case seems clearly contrary to what was said by the Supreme Court in *Gilbert Associates* and *United States Security Tr. & Sav. Bk.*, and this Court in *United States v. Sampsell*, 153 F. 2d 731.

which is the sense the words "judgment creditor" are used in Section 3672 of the Code.

⁴After this brief had been prepared but before it was filed, our attention was called to the recent decision in *In the Matter of Green*, 124 F. Supp. 481 (N.D. Ala.). In that case the question of whether a trustee in bankruptcy is a judgment creditor within the meaning of Section 3672 was squarely presented. The Court held that a trustee in bankruptcy is not a judgment creditor within the meaning of Section 3672, citing *United States v. Gilbert Associates*, *supra*, and Justice Jackson's concurring opinion in *United States v. Security Tr. & Sav. Bk.*, *supra*. The court pointed out (p. 482) that it did not intend to say that "a trustee in bankruptcy does not occupy the fictitious position of judgment creditor" under Section 70 c of the Bankruptcy Act but merely that "a bankruptcy trustee is not a 'judgment creditor' within the purview of 26 U.S.C.A. §3672."

The history of Section 3672 shows that it was enacted to protect lienors who acted without knowledge of the Government's lien for taxes. It was merely a recordation statute. Its purpose was not to deprive the Government of its tax liens merely because the taxpayer was declared a bankrupt before notice of the lien had been filed.⁵

The trustee in bankruptcy takes all the personal property not in the possession of lienors. His taking possession of that property in no way affects the pri-

⁵In his concurring opinion in *United States v. Security Tr. & Sav. Bk.*, *supra*, pages 51-53, Justice Jackson went into the history of Section 3672 and the circumstances which led to its enactment. After pointing out that in *United States v. Snyder*, 149 U.S. 210, it was held that a tax lien was a valid binding lien even against a bona fide purchaser for value without knowledge or notice of the existence of such a lien, he said (pp. 52-53):

Thereafter the statute was amended and a proviso added which said: “* * * That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector * * *” in the appropriate place for filing. 37 Stat. 1016. The House Report accompanying the proposed amendment, H. R. Rep. No. 1018, 62d Cong., 2d Sess. 2 (1912), said in part, after citing the above case:

“* * * the lien is so comprehensive that it covers all the property and rights to property of the delinquent situated anywhere in the United States, and any person taking title to real estate is subjected to the impossible task of ascertaining whether any person, who has at any time owned the real estate in question, has been delinquent in the payment of the taxes referred to while the owner of the real estate in question. The business carried on under the internal-revenue law may be at a great distance from the property affected by this secret lien, but this will not relieve the property from the lien.”

See, also:

Detroit Bank v. United States, 317 U.S. 329, 334.

As a result of the decision in 1938 in *United States v. Rosenfield*, 26 F. Supp. 433 (E.D. Mich.), Section 3672 was amended by the Revenue Act of 1939 so as to include “pledgee” among classes enumerated. See H. Rep. No. 855, 76th Cong., 1st Sess., page 26 (1939-2 Cum. Bull. 504, 523-524).

ority of lien creditors, except as prescribed in Section 67 c. As this Court said in *United States v. Sampsell*, *supra*, (p. 735): "The trustee acquires no better title than the bankrupt himself had." See also *Security Warehousing Co. v. Hand*, 206 U.S. 415; cf. *United States v. Fogarty*, 164 F. 2d 26 (C.A. 8th).

CONCLUSION.

For the reasons herein stated, the order of the District Court confirming the order of the referee in bankruptcy should be reversed to the extent it disallowed the claim of the Government that it had valid liens for unpaid taxes and interest in the amount of \$945.37 which were entitled to the priority of payment prescribed by Section 67 of the Bankruptcy Act.

Respectfully submitted,

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December, 1954.

(Appendix Follows.)

Appendix.

Appendix

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [As amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is

authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

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(26 U.S.C. 1952 ed., Sec. 3672.)

REVISED STATUTES:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as

to cases in which an act of bankruptcy is committed.

(31 U.S.C. 1952 ed., Sec. 191.)

Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840:

SEC. 64 [As amended by Section 12 of the Act of June 28, 1946, c. 512, 60 Stat. 323, and Section 131 of the Act of May 24, 1949, c. 139, 63 Stat. 89]. DEBTS WHICH HAVE PRIORITY.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary fund and for the referees' expense fund; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the

court may allow; (2) wages, not to exceed \$600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis; whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under Chapter 9 of Title 18 of the United States Code, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And provided further*, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [*sic*] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That

such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

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(11 U.S.C. 1946 ed., Sec. 104.)

SEC. 67. LIENS AND FRAUDULENT TRANSFERS.—* * *

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b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapter X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

c. Where not enforced by sale before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or XIII of this

Act, though valid under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or subdivision thereof, on personal property not accompanied by possession of such property, and liens, whether statutory or not, of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of section 64 of this Act, and, except as against other liens, such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision a of section 64 of this Act.

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(11 U.S.C. 1946 ed.. Sec. 107.)

SEC. 70. TITLE TO PROPERTY.—* * *

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c. [As amended by Section 2 of the Act of March 18, 1950, c. 70, 64 Stat. 24]. The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property of the bankrupt at the date of bankruptcy whether or not coming into possession or control of the court, shall be deemed vested as of the date of bankruptcy with all the rights, remedies, and powers of a creditor then holding a lien thereon by legal or equitable proceedings, whether or not such a creditor actually exists.

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(11 U. S. C. 1946 ed., Supp. IV, Sec. 110.)

itor then holding an execution duly returned unsatisfied, whether or not such a creditor actually exists.

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(11 U.S.C. 1946 ed., Sec. 110.)

